IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.483 OF 2005

Dr.Jitendra H. Sanghavi,
Rath Mansion, Dr.V. Rath Road,
Opp. Hotel Amigo,
Veer Savarkar Marg, Dadar,
Mumbai - 400 028. .. Petitioner.

V/s.

1. Vivek Purshottam Sukhtankar
5, Ashirvad, Xavier Street,
Parel, Bombay - 400 012.

2. Y.R. Mankodi, Director,
M/s.Elya Injekt Pvt. Ltd.,
Shah Industrial Estate,
Jyoti Wire House, 23-A,
Veera Desai Road, Andheri (W),
Bombay - 400 058. .. Respondents.

Mr.Rahul Merlekar for the petitioner.

None for the respondents.

CORAM : J.P. DEVADHAR, J.

DATED : 24TH AUGUST, 2006.

ORAL JUDGMENT :

1. This petition was initially filed against respondent No.1 and Mr.Y.R. Mankodi, director of M/s.Elys Injekt Private Limited, who is reported to be dead. Accordingly, the counsel for the petitioner states that the petitioner does not wish to proceed against the respondent No.2.

2. Though the respondent No.1 is served, he has remained absent. The affidavit of service filed by the

petitioner is taken on record.

3. The respondent No.1 - employee of M/s.Elys Injekt Private Limited (for short 'the said company') had filed an application under Section 33-C(2) of the Industrial Disputes Act, 1947 claiming dues in respect of his employment with the said company. In the said application, the respondent No.1 had impleaded the petitioner as one of the opponent on the ground that the petitioner is also a director of the said company. The petitioner in his written statement stated that he was not connected with the said private limited company in any manner whatsoever and that he was neither a director nor an employee of the said company. Accordingly, the Labour Court framed an issue as to whether the respondent No.1 proves that he is workman of the petitioner. Parties led oral evidence in the matter. After hearing both the parties, by the impugned order dated December 1, 2004, the 7th Labour Court, Mumbai held that Mr.Y.R. Mankodi as well as the petitioner are jointly and severally liable to pay the legal dues to the tune of Rs.44,312/- with interest at the rate of 6% per annum from the date of application to the respondent No.1. Challenging the said order, present petition is filed.

4. The learned counsel for the petitioner submitted that in the written statement as well as in the oral

evidence, the petitioner had stated that he was in no way connected with the said company either as a director or an employee. Referring to the evidence led by the respondent No.1 as well as the petitioner, the learned counsel submitted that in absence of any iota of evidence to show that the petitioner was connected with the said company, the learned Judge of the Labour Court was in error in holding that the petitioner is jointly and severally liable to pay the dues payable to the respondent No.1.

5. Although the respondent No.1 has chosen not to appear in spite of fresh service of the rule pursuant to the order dated June 12, 2006, with the assistance of the counsel for the petitioner, I have gone through the entire evidence led before the Labour Court and also the impugned order passed in the matter. On perusal of the evidence led in the matter it is evident that even the respondent No.1 admitted in his cross-examination that the petitioner has neither appointed the respondent No.1 nor there was any personal relationship between the respondent No.1 and the petitioner. The respondent No.1 has not adduced any evidence to show that the petitioner was a director of the said company. In these circumstances, in my opinion the learned Judge of the Labour Court was not justified in holding that the petitioner has failed to discharge the burden. The initial burden was on the respondent No.1 to establish

that the petitioner was a director of the said company. As the respondent No.1 failed to discharge that burden, there was no burden upon the petitioner to prove the negative. Therefore, the finding recorded by the learned Judge that by merely denying the petitioner cannot be said to have discharged the burden of proving that he was not connected with the said company cannot be sustained. As stated earlier, save and except making a bald statement that the petitioner was a director of the said company, the respondent No.1 had not adduced any evidence to show that the petitioner was a director of the said company. In this view of the matter, there being no burden on the petitioner to prove the negative, the petitioner cannot be said to have failed to discharge the burden.

6. Similarly, the fact that the petitioner knew Mr.Y.R. Mankodi cannot be a ground to hold that the relationship and nexus is established between the respondent No.1 and the petitioner. The fact that the petitioner knew Mr.Y.R. Mankodi, director of the said company would not make the petitioner a director or an employee of the said company. In my view, the Labour Court committed an error in holding that the petitioner is liable to pay the dues simply because the petitioner knew Mr.Y.R. Mankodi, director of the said company. In my view, the petitioner was not connected with the said company and, therefore, the petitioner cannot be saddled

with the liability.

7. In this view of the matter, I am of the opinion that the impugned order passed by the learned Judge of the Labour Court suffers from serious infirmities and the same cannot be sustained. Accordingly, the impugned order dated December 1, 2004 is quashed and set aside to the extent it holds the petitioner jointly and severally liable to pay the legal dues to the respondent No.1.

8. The writ petition is, accordingly, allowed. Rule is made absolute in above terms. However, there will be no order as to costs.

(J.P. DEVADHAR, J.)